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June 9, 1993

FAX: (202) 686-6282

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: MM Docket No. 93-107

RECEIVED

JUN - 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

On behalf of ASF Broadcasting Corporation, applicant in the above-referenced proceeding, there are transmitted herewith an original and six copies of its **OPPOSITION TO SECOND MOTION TO ENLARGE ISSUES**.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner
Counsel for
ASF BROADCASTING CORPORATION

Enclosures

No. of Copies rec'd 
List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

DAVID A RINGER
et al.

For Construction Permit for
New FM Station on Channel 280A
at Westerville, Ohio

TO: Administrative Law Judge
Walter C. Miller

) MM Docket No. 93-107
)
)

) File Nos. BPH-911230MA et al.
)
)

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JUN 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION TO SECOND MOTION TO ENLARGE ISSUES

ASF Broadcasting Corporation ("ASF"), by its attorneys, hereby opposes the Second Motion to Enlarge Issues Against ASF filed May 25, 1993 by Ohio Radio Associates, Inc. ("ORA"). In response thereto, the following is submitted:

ORA's first argument is that the letter by which ASF (and other applicants specifying the WBBY site) claims reasonable assurance of the availability of the transmitter site is deficient. In making this argument, ORA ignores the letter taken as a whole, and seizes upon individual phrases which, it claims, rob the letter of its reasonable assurance. In fact, it is obvious from the fact that each letter is virtually identical that Mid-Ohio Communications, Inc. intended to establish a level playing field for any and all applicants wishing to specify these facilities. It is equally obvious that Mid-Ohio did not wish any applicant to be able to claim it had a binding lease, and thereby claim any kind of exclusive arrangement vis-a-vis

other applicants. Thus, extreme care was taken to be certain that the letter be only reasonable assurance -- and nothing more.

Interestingly, ORA itself specified the WBBY site in its application filed December 31, 1991. In it, ORA certified that its reasonable assurance was obtained from Carl Fry, authorized representative for Mid-Ohio Communications, Inc. Attachment A hereto is a copy of the letter upon which ORA apparently based its reasonable assurance. It can be seen that this is identical to the letter which ORA now claims lacks such reasonable assurance. Perhaps the fact that ORA subsequently amended to a different transmitter site somehow changed the character of Mid-Ohio's offer. Alternatively, ORA falsely certified as to its own reasonable assurance at the time it filed its application.

ORA claims a second basis for adding the requested issue on the ground that ASF did not produce documents shown to Mid-Ohio in 1992. This is based upon nothing more than speculation and surmise, not taking into account that there might be other reasons for such non-production. 47 C.F.R. Section 1.229(c) requires specific allegations of fact to support a request for issues. ORA's speculation falls far short of that requirement. In fact, because the Mid-Ohio ownership was well familiar with Ardeth Frizzell at the time, the "standard" condition on the Mid-Ohio letter was waived. Of course, ORA knew about Ms. Frizzell's relationship with WBBY at the time the Second Motion was filed, but chose to ignore a rather obvious alternative.

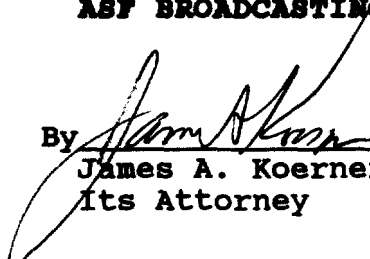
Attachment B hereto is a Declaration of Carl C. Nourse, then-President of Mid-Ohio, confirming that he advised Ardeth Frizzell there was no need to supply financial information at the time.

Also attached hereto, as Attachment C, is a copy of further correspondence from Carl B. Fry, counsel for Mr. Nourse, indicating that his client considers the condition to have been met.

In light of the foregoing, it is respectfully submitted that the Second Motion should be denied, and the requested issue should not be added.¹ ²

Respectfully submitted,

ASF BROADCASTING CORPORATION

By 
James A. Koerner
Its Attorney

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& HOCHBERG, P. C.
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June 9, 1993

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¹ORA, proposing no integration, cannot prevail unless it is able to disqualify all of its competitors. Thus, it must file petitions seeking disqualifying issues. However, the facts -- or lack thereof -- surround the Second Motion suggest that ORA is treading on thin ice. and may need a reminder that it must still

MID-OHIO COMMUNICATIONS, INC.

**Post Office Box 14
Westerville, Ohio 43081**

December 30, 1991

282

Ohio Radio Associates

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From : WCKXFM

PHONE No. : 464 2960

Jun.07 1993 10:04AM P01

ATTACHMENT B

From : WCKXFM

PHONE No. : 464 2960

Jun. 07 1993 4:50PM P02

JUN 07 '93 16:45 FRY&WALLER/2296690

P.3/3

MID-OHIO COMMUNICATIONS, INC.

**Post Office Box 14
Westerville, Ohio 43081**

June 7, 1993

ATTACHMENT C

**Ardeth Frizzell
164 S. Graner Road
Columbus, OH 43228**

RE: Mid-Ohio Communications, Inc./WBBY-FM/Lease of Assets

Dear Ms. Frizzell:

This correspondence is to follow-up your most recent inquiry pertaining to the lease of certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which was utilized in regard to the broadcast operation of WBBY-FM. You have indicated that you are still among those being considered by the Federal Communications Commission for the broadcast license and

CERTIFICATE OF SERVICE

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing **OPPOSITION TO SECOND MOTION TO ENLARGE ISSUES** were sent this 9th day of June, 1993, via first class mail, postage prepaid to the following:

Administrative Law Judge Walter C. Miller*
Federal Communications Commission
2000 L Street, N. W., Room 213
Washington, D. C. 20554

James Shook, Esquire*